

To: CN=Erin Foresman/OU=R9/O=USEPA/C=US@EPA[]
Cc: "Nepstad, Michael G SPK" [Michael.G.Nepstad@usace.army.mil]
Bcc: []
From: CN=Tom Hagler/OU=R9/O=USEPA/C=US
Sent: Tue 8/10/2010 10:12:03 PM
Subject: Re: Question on tying BDCP operations to performance of the plan
<http://per2.nwp.usace.army.mil/survey.html>
<http://www.spk.usace.army.mil/organizations/cespk-co/regulatory/index.html>

If you dig into this deep enough and far enough back, you can find all kinds of interesting schemes for "phasing" the project. I don't recall seeing that particular arrangement, but it doesn't surprise me. Nawi, on the call today, was referencing a proposal to "phase" the construction of the project, again tied to some measurable environmental success.

We did a lot of conceptual thinking about this back in the 1990's, when the "Assurances Workgroup" was trying to come up with some kind of phased assurances. There may be some merit to it, but it does create a possible conundrum for the regulatory agencies, which is this: To get a permit under some regulatory regime, you have to meet X, Y and Z. If you meet X, Y and Z, how does the regulatory agency then say "No, you also have to meet the phasing package deal." Theoretically, the applicant can execute an agreement committing to the phasing, but isn't it still a little awkward for a regulatory agency to enforce just the phasing deal if it is beyond the scope of their regulatory mission? For that reason, the Assurances Workgroup tended to favor a legislative "blessing" of all these side deals.

This is all very fascinating.

From: Erin Foresman/R9/USEPA/US
To: "Nepstad, Michael G SPK" <Michael.G.Nepstad@usace.army.mil>
Cc: Tom Hagler/R9/USEPA/US@EPA
Date: 08/10/2010 02:17 PM
Subject: Re: Question on tying BDCP operations to performance of the plan

Hi Mike,

Thanks for this message and the last one. I have not been a part of conversations that discussed this strategy. I also haven't seen anything like that in writing for BDCP. It is interesting, would enjoy discussing it with you. I cc'd tom hagler in case he has heard of anything like this.

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-----"Nepstad, Michael G SPK" <Michael.G.Nepstad@usace.army.mil> wrote: -----

To: Erin Foresman/R9/USEPA/US@EPA

From: "Nepstad, Michael G SPK" <Michael.G.Nepstad@usace.army.mil>
Date: 08/10/2010 02:09PM
Subject: Question on tying BDCP operations to performance of the plan

Hi Erin,

I'm not sure if you know the answer to this question or not, but it seems like a while ago there were discussions at the Federal agency group that the amounts of water the contractors would receive through the BDCP process would be tied in some way to the performance of the habitat and other good things.

I'm thinking it would be something like: all contractors would get 50% of their maximum deliveries plus 1% more for each 1% of water conservation achieved (up to 20%) plus 1% for every 200% increase in delta smelt indices (up to 10%) plus 1% for every 200% increase in winter run redds (up to 10%) plus 1% for every 6,500 acres of new habitat created which meets performance criteria after a 5 to 15 year monitoring period (up to 10%).

Have you seen anything like that on the BDCP? More curious that anything else at this point. Thanks,

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